

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
JANUARY 13, 2021**

**CALL TO ORDER  
6:00 PM**

A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. in the Country Kitchen at the County Fairgrounds, 265 N. Meridian Rd., Kalispell, MT 59901. Board members present were Sandra Nogal, Greg Stevens, Jeff Larsen, Elliot Adams, Verdell Jackson, and Buck Breckinridge. Kevin Lake, Mike Horn, and Ron Schlegel had excused absences. Erin Appert, Laura Mooney, Donna Valade, and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were approximately 33 members of the public in attendance.

**APPROVAL OF  
MEETING  
MINUTES  
6:01 PM**

Nogal made a motion, seconded by Jackson, to approve the October 14, 2020 meeting minutes.

Motion passed unanimously on a roll call vote.

**ELECTION OF  
OFFICERS  
(CHAIRMAN)  
6:01 PM**

Stevens nominated Jeff Larsen, seconded by Nogal, to remain Chairman of the Flathead County Planning Board.

**ROLL CALL FOR  
ELECTION OF  
CHAIRMAN  
6:01 PM**

Motion passed on a 5-0 roll call vote. Larsen abstained.

**ELECTION OF  
OFFICERS FOR  
VICE-CHAIRMAN  
6:02 PM**

Nogal nominated Greg Stevens, seconded by Larsen, to remain Vice-Chairman of the Flathead County Planning Board.

**ROLL CALL FOR  
ELECTION FOR  
VICE-CHAIRMAN  
6:02 PM**

Motion passed unanimously on a roll call vote.

**PUBLIC COMMENT**  
*(Public matters that are within the jurisdiction of the Board 2-3-103 M.C.A)*  
**6:02 PM**

None

**DISCLOSURE OF ANY CONFLICT OF INTERESTS**  
**6:03 PM**

None

**DAVID AND COLLEEN STEVENS (FZC-20-12)**  
**6:03 PM**

A zone change request from Josh Lenderman of River Design Group on behalf of David A. Stevens and Colleen E. Stevens for property in the Highway 93 North Zoning District. The proposal would change the zoning on property located at 239 Fox View Trail, Kalispell, MT from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural) on 15.03 acres.

**STAFF REPORT**  
**6:03 PM**

Donna Valade reviewed staff report FZC-20-12 for the board.

**BOARD QUESTIONS**  
**6:05 PM**

None

**APPLICANT PRESENTATION**  
**6:06 PM**

Josh Lenderman with River Design Group, 236 Wisconsin Ave, represented the applicant. He reviewed the application request and the surrounding zoning, adjacent to the property.

**BOARD QUESTIONS**  
**6:07 PM**

Nogal wondered how long the applicants had owned the land but Lenderman was unsure of that answer. The owner replied, from the audience, he had owned it for about 30 years.

**AGENCY COMMENTS**  
**6:08 PM**

There were no public agencies present for public comment.

Larsen asked Valade to review the written public comment received, which was in opposition of the application. They concern was the increase of density.

Larsen asked Valade to summarize the agency comments received.

**PUBLIC  
COMMENT**  
*6:11 PM*

Zachary Pitts, 34 Glacier Circle, spoke in favor of the application. Similar zoning was in the area and he was in favor of property rights.

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-20-12)**  
*6:12 PM*

Stevens made a motion, seconded by Jackson, to adopt staff report FZC-20-12 as findings of fact.

**BOARD  
DISCUSSION**  
*6:12 PM*

None

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-20-12)**  
*6:13 PM*

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZC-20-12)**  
*6:13 PM*

Stevens made a motion, seconded by Jackson, to recommend approval of FZC-20-12 to the Board of County Commissioners.

**BOARD  
DISCUSSION**  
*6:13 PM*

Larsen said SAG-10 and SAG-5 had similar uses. The zone change was consistent with the surrounding lot sizes in the area and he was in favor of the proposal.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-20-12)**  
*6:14 PM*

Motion passed on a 5-0 roll call vote. Nogal abstained.

**DONALD AND  
BECKY SNECK  
(FZC-20-13)**  
*6:14 PM*

A zone change request from Josh Lenderman of River Design Group on behalf of Donald F. and Becky B. Sneck for property in the Highway 93 North Zoning District. The proposal would change the zoning on property located at 940 Ranch Lane, Kalispell, MT from SAG-10 (Suburban Agricultural) to SAG-5 (Suburban Agricultural) on 9.997 acres.

**STAFF REPORT**  
*6:15 PM*

Donna Valade reviewed staff report FZC-20-13 for the board.

**BOARD  
QUESTIONS  
6:16 PM**

Adams wondered why the applicant wanted to go to SAG-5 since the property was under 10 acres. Valade discussed conflicting certificates of survey which could be resolved if they wanted to subdivide.

**APPLICANT  
PRESENTATION  
6:17 PM**

Josh Lenderman with River Design Group, 236 Wisconsin Ave, represented the applicant. He reviewed the application request and the surrounding zoning, adjacent to the property.

**BOARD  
QUESTIONS  
6:20 PM**

None

**AGENCY  
COMMENTS  
6:20 PM**

There were no public agencies present for public comment. Agency comments received were reviewed in the staff report.

**PUBLIC  
COMMENT  
6:20 PM**

Zachary Pitts, 34 Glacier Circle, spoke in favor of the application. He discussed the family intentions behind the zone change.

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-20-13)  
6:21 PM**

Stevens made a motion, seconded by Jackson, to adopt staff report FZC-20-13 as findings of fact.

**BOARD  
DISCUSSION  
6:22 PM**

None

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-20-13)  
6:22 PM**

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZC-20-13)  
6:22 PM**

Adams made a motion, seconded by Jackson, to recommend approval of FZC-20-13 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
6:22 PM**

None

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-20-13)  
6:22 PM**

Motion passed unanimously on a roll call vote.

**DONOVAN  
BERGESON  
(FZC-20-14)  
6:23 PM**

A zone change request from Donovan Bergeson with technical assistance from Sands Surveying, Inc. for property in the Highway 93 North Zoning District. The proposal would change the zoning on property located at 100 Scenic Ridge Road and 4095 Highway 93 North, Kalispell, MT from SAG-10 (Suburban Agricultural) to I-1H (Light Industrial-Highway). The total acreage involved in the request is approximately 14.07 acres.

**STAFF REPORT  
6:23 PM**

Laura Mooney reviewed staff report FZC-20-14 for the board.

**BOARD  
QUESTIONS  
6:26 PM**

Larsen asked staff to summarize public comment which had been received.

**APPLICANT  
PRESENTATION  
6:27 PM**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicants. The reason for the request was to build storage units for RVs in the winter months. The property was in the vicinity of the landfill. Mulcahy discussed previous policy, which looked at the light industrial uses as being compatible with the landfill, as opposed to residential uses.

**BOARD  
QUESTIONS  
6:29 PM**

None

**AGENCY  
COMMENTS  
6:29 PM**

There were no public agencies present for comment. Agency comments received were reviewed in the staff report.

Larsen asked staff to review the violation that was on the property. Staff explained there were conditions regarding landscaping which had not been met.

**PUBLIC  
COMMENT  
6:31 PM**

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FZC-20-14)  
6:31 PM**

Breckenridge made a motion, seconded by Jackson, to adopt staff report FZC-20-14 as findings of fact.

**BOARD  
DISCUSSION  
6:31 PM**

Larsen addressed an amendment that needed to be made on Finding of Fact #2 because it was partially forested.

**MOTION TO  
AMEND F.O.F. #2  
6:32 PM**

Larsen motioned, seconded by Breckenridge, to amend Finding of Fact #2 to state:

2. The proposed map amendment will not impact safety from fire and other danger because even though the properties are located in the WUI it is ~~not~~ forested and is located approximately 4.75 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.

**BOARD  
DISCUSSION  
6:32 PM**

None

**ROLL CALL TO  
AMEND F.O.F. #2  
6:32 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
6:33 PM**

Larsen discussed discrepancies of the maps in the staff report and explained that the location of the property was forested. Staff had updated the map already.

Nogal asked if the landscape issue [in regards to the violation] correlated with the findings. Larsen was unsure. Staff assured them that the applicants would have to come into compliance to resolve the violation issue. Staff did not believe they needed to go into the findings but staff wanted to make the board aware of it.

**ROLL CALL TO  
ADOPT F.O.F.  
(FZC-20-14)  
6:35 PM**

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZC-20-14)  
6:35 PM**

Nogal made a motion, seconded by Jackson, to recommend approval of FZC-20-14 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
6:35 PM**

Nogal appreciated knowing what the plans for the lot were.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZC-20-14)  
6:35 PM**

Motion passed unanimously on a roll call vote.

**WILD BILL  
RESERVE  
(FPP-20-19)  
6:37 PM**

A request from Eric Mulcahy of Sands Surveying, on behalf of Paul D. Wachholz for preliminary plat approval of Wild Bill Reserve, a proposal to create six (6) new residential lots on 159.628 acres. The proposal would be served by individual wells and septic systems. The properties are located on Wild Bill Road, Kila MT.

**STAFF REPORT  
6:37 PM**

Donna Valade reviewed staff report FPP-20-19 for the board.

**BOARD  
QUESTIONS  
6:44 PM**

Larsen wondered if they needed to consider the variance separately. Discussion ensued over protocol for the variance.

**APPLICANT  
PRESENTATION  
6:45 PM**

Eric Mulcahy with Sands Surveying, 2 Village Loop, represented the applicant. Mulcahy discussed the process to subdivide this property. The lots would average 26 acres in size, and they were proposing 6 lots. He discussed the logging which had been done. He discussed the traffic study and their proposal for paving and dust mitigation. The applicant was trying to work with the fire district to mediate their concerns.

**BOARD  
QUESTIONS  
6:51 PM**

Larsen wondered where the proposed paved cul-de-sac was located and Mulcahy discussed this in detail.

**AGENCY  
COMMENTS  
6:52 PM**

There were no public agencies present for comment. Received agency comments were reviewed in the staff report.

**PUBLIC  
COMMENT  
6:52 PM**

Larry Klamecki, 2207 Wild Bill Rd., spoke in support of the project, however, was in opposition of any requirement of paving with asphalt. They were looking forward to a larger community. He said that paving would create safety issues with the ice and put the burden on the current residence.

William Kowalewski, 77 Eagle Mountain Way, spoke in opposition of the application. He was concerned about water supply because his well ran dry

several times a year. He felt that it would worsen the problem.

**APPLICANT  
REBUTTAL  
6:57 PM**

Paul Wacholz, 183 Fairway Blvd, was the applicant and addressed some of the public concerns. He had tried to match the neighborhood. He researched the wells in the area, their output, and tried to match it. He addressed paving the road and the fact that it was shaded most of the time, consequently creating a hazardous roadway. He commented that it was a recreational road and used frequently. He felt that paving it might be a detriment to the area and would be better served kept as a gravel road.

**BOARD  
QUESTIONS  
7:00 PM**

Jackson assumed there were different water levels for the wells. Walcholz appreciated the concern over the wells but, in their research, did not find any complications. Some of the neighbors had artesian wells. Larsen asked if he knew what the depths of the wells were and if they were bedrock aquifers.

There were comments made by the public (unidentified) whom discussed the type of wells and any problems they had on their property.

Mulcahy had provided well logs and discussed those in detail.

**STAFF  
REBUTTAL  
7:03 PM**

None

**MAIN MOTION  
TO ADOPT F.O.F.  
(FPP-20-19)  
7:04 PM**

Breckenridge made a motion, seconded by Jackson, to adopt staff report FPP-20-19 as findings of fact.

**BOARD  
DISCUSSION  
7:04 PM**

None

**MOTION TO  
AMEND F.O.F. #4  
7:04 PM**

Adams made a motion, seconded by Nogal, to amend Finding of Fact #4 to state:

4. The road system appears to be acceptable because Wild Bill Road is a gravel two lane public road within a 60 foot easement which will access Lots 2 through 6, and the applicant will develop to Flathead County Road and Bridge Standards for gravel roads and utilize approximately 465 lineal feet of an existing 60 foot Easement Agreement for accessing Lot 1, and the potential increase for ~~Wild Bill Road~~ *Truman Creek Road* is 8.3%.

**BOARD  
DISCUSSION  
7:04 PM**

None



**ROLL CALL TO  
AMEND F.O.F. #4  
7:04 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
7:04 PM**

None

**ROLL CALL TO  
ADOPT F.O.F. AS  
AMENDED  
(FPP-20-19)  
7:05 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO  
RECOMMEND  
APPROVAL OF  
THE ROAD  
VARIANCE  
7:05 PM**

Nogal motioned, seconded by Breckenridge, to recommend approval for the off-site road improvement paving variance.

**BOARD  
DISCUSSION  
7:05 PM**

Adams questioned, and the board discussed, if the issues of pavement were within their jurisdiction.

Larsen addressed the variance, which needed to meet all of the findings. He discussed subdivision regulations. He felt it met the criteria, with the exception of #2. He heard convincing testimony where the neighbors did not want pavement. He discussed the regulations at length and the difficulty of granting a variance based on what was stated in the regulations.

Stevens did not feel it met the requirements for a variance, however, he heard the testimony from the neighbors who did not want it paved. He reiterated that everything he did for the county was related to health, safety, and general welfare. The criteria requirement for pavement could not be disregarded, but perhaps could be restricted because, in this case, less was better. He acknowledged the dangers of icy pavement.

Jackson was bothered by the variance because he was a rule follower, however, the neighbors did not want the pavement which had swayed his opinion.

Klamecki took the podium and stated none of the neighbors wanted the pavement because of what it would do to [safety and maintenance of] the road.

Adams started discussion about the best protocol for the variance.

Stevens discussed the fact that it was a county road that was not maintained by county and wondered if they could use that fact to recommend removing the paving requirement.

Larsen addressed item #1 on the variance which could be modified based on the safety, health, and general welfare of the neighbors and their concern over the safety of the road.

Staff addressed Finding of Fact #16 and suggested they could add "Public comment raised at the hearing revealed the health, safety, and welfare of the users of Wild Bill Road will be better served by approving a variance to any paving requirement for Wild Bill Road."

Discussion continued regarding amending the findings to support the variance.

**BOARD BREAK**

**7:21 PM**

**CONTINUATION  
OF BOARD  
DISCUSSION**

**7:37 PM**

Staff explained the process and protocol and assured that the issues of safety in paving Wild Bill Road will be addressed. They suggested leaving the wording of finding of fact #16 as is and adding:

Public comment raised at the hearing revealed the health, safety, and welfare of the users of Wild Bill Road will be better served by approving a variance to any paving requirement for Wild Bill Road.

**MOTION TO  
AMEND F.O.F. #16**

**7:37 PM**

Larsen motioned, seconded by Jackson, to amend Finding of Fact #16 as stated.

**BOARD  
DISCUSSION**

**7:38 PM**

None

**ROLL CALL TO  
AMEND F.O.F. #16**

**7:38 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION**

**7:39 PM**

Jackson wondered if a neighbor could still request to have the road paved. Staff explained, if the variance passed, there would be no required paving for Wild Bill Road. Jackson was bothered by the idea that the variance would be passed based on the testimony given tonight in the chance that someone may still want it.

**ROLL CALL TO  
RECOMMEND  
APPROVAL OF  
ROAD VARIANCE**  
*7:40 PM*

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FPP-20-19)**  
*7:41 PM*

Stevens made a motion, seconded by Jackson, to recommend approval of FPP-20-19 to the Board of County Commissioners.

**BOARD  
DISCUSSION**  
*7:42 PM*

Board and staff discussed condition #23 which required paving. Larsen felt it should stay because the Commissioners could deny the variance.

Nogal was unclear about the fire retardant requirements but Larsen said it was ok as written.

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FPP-20-19)**  
*7:43 PM*

Motion passed unanimously on a roll call vote.

**BAKER 80  
SUBDIVISION  
(FPP-20-09)**  
*7:43 PM*

A request from GBSB Holdings, LLC with technical assistance from TD&H Engineering, Inc. for preliminary plat approval of Baker 80 Subdivision, a proposal to create 16 residential lots on approximately 80 acres. The proposal would be served by individual wells and septic systems. Access to each lot would be from an internal subdivision road via Prairie View Road and Whitefish Village Drive.

**STAFF REPORT**  
*7:44 PM*

Erin Appert reviewed staff report FPP-20-09 for the board.

**BOARD  
QUESTIONS**  
*7:46 PM*

None

**APPLICANT  
PRESENTATION**  
*7:46 PM*

Doug Peppmeier with TDH Engineering, 450 Corporate Dr., was the technical representative. He discussed the private easement at great length. They were told they could not connect to a public easement access. He felt it was clear that it was a public road in which they had access to. He discussed the revisions he was requesting on the conditions.

Nogal asked for clarification from the County Attorney's Office regarding Prairie View Rd. Peppmeier responded the interpretation was that they had no right to use it. Peppmeier rebutted this in great detail.

Rich De Jana, ESQ distributed a document with proposed language for several findings of fact and conditions (*see attached*). He read from the document and discussed it in great detail.

Stevens referenced Condition #24 of the Whitefish Hills Village (WHV) preliminary plat approval. De Jana read the condition out loud. Stevens stated it seemed as though it was a condition of approval for WHV that the alternate route be left open to the public. De Jana agreed and explained it was also a condition of the road abandonment of Brady Way. Stevens stated it was his understanding state statute required a substitute access in order to abandon a road. De Jana confirmed that was true for public land, and if a right-of-way extended to private land, permission was required from all landowners abutting the right-of-way. Stevens asked De Jana if a road abandonment could be rescinded by the County if it was done illegally. De Jana replied it could be rescinded by the court.

Larsen referenced Condition #4 on the road abandonment petition for Brady Way and stated it seemed the justification for abandonment of the road was that they were going to provide the same access for public land as required by state law. Larsen asked for clarity on what was required to abandon a public right-of-way adjoining private land. De Jana replied it required permission from all adjoining property owners. Larsen noted they did not check off #5 on the petition for a justification for the abandonment. He asked De Jana if both #4 and #5 on the petition need to be checked. De Jana replied it was his opinion both sections need to be checked.

Scott Baker, 2619 Lidstone Street, was frustrated because no one had verified why they could not use the road. He said the road had a public access easement and referenced the road realignment and WHV preliminary plat approval. The road abandonment petition did not include the required property owner's signature. WHV was required to construct the spur road as part of the realignment of Prairie View Road with Brady Way. He was legally entitled to utilize the County right-of-way regardless of subdivision approval and had received an approach permit. He acknowledged some of the public's concerns and his attempts to appease them, including utilizing Prairie View Road for construction traffic. The roads were private roads but had public access easements. He stated the issue had cost him a fortune in attorney fees and concluded he did not want to have to pursue a lawsuit.

**AGENCY  
COMMENTS**  
*8:16 PM*

No public agencies were present to comment. Submitted agency comments were reviewed in the staff report.

**PUBLIC  
COMMENT**  
*8:17 PM*

Amy Hooks, 167 Lookout Court, spoke in opposition of the application. They were concerned about the recent activity where a road was being developed before approval. She was concerned about the disregard for the process of approval. She was concerned about property value and the public process

Sherry Jones, 1272 Whitefish Village Dr., spoke in opposition of the application. She discussed the logistics of the roads and easement. She went over the plat maps. She was concerned about the interest of the developer superseding the interest of the home owners.

Don Murray, ESQ, spoke in opposition of the application. He stated he represented WHV Subdivision. He touched on Section 4.7.15 of the Flathead County Subdivision Regulations (FCSR) as it seemed to be an issue. It was the opinion of the County Attorney's Office that a subdivision could not be required to grant a new subdivision access through their subdivision roads, even though they were deemed public access easements. All new subdivision roads were public access easements which means subdivisions could not close off their roads to the public. The regulations stated a subdivision may be required to provide access to adjacent un-subdivided land, not a subdivision. If access to the adjacent un-subdivided land was required, it would have been specifically stated in the preliminary plat approval for WHV, and it was not. The staff report for the previously approved zone change states Prairie View Road provides access to the property. His client constructed and/or improved eighteen miles of roads to serve the Whitefish Hills subdivisions. He stated that requiring the developer of the proposed subdivision to improve a portion of Prairie View Road was not asking a lot. He concluded that the interests of the WHV residents was most important and they should not be forced to grant access.

Pam Ellis, 115 Hills Lookout Court, spoke in opposition of the application. She felt that someone else's burden was being pushed on the homeowners because they were told that the road was private and they maintained the road. She did not feel that it was fair.

Erica Heller, 1322 Whitefish Drive, spoke in opposition of the application. They had been told that the road was private road. She was concerned about the safety impact with additional traffic and the quality of the road deteriorating over the years.

**APPLICANT  
REBUTTAL**  
*8:45 PM*

Peppmeier addressed some of the concerns. He discussed The Brady Way right of way in depth. The developer would have to build a significant amount of new road. The proposed subdivision would require contribution to the

maintenance of the WHV roads. He understood the concerns regarding traffic and emphasized they were adding twelve lots. The Flathead County Road Department would look at traffic impacts if it were to add more than 200 trips per day.

De Jana Referenced page 2 of the document, in which he submitted on December 2, 2020, and discussed Section 4.7.15 FCSR. The intention of this requirement was for subsequent subdivisions and discussed this at length. He also addressed that there were no conditions of approval associated with zone changes.

**STAFF  
REBUTTAL  
8:50 PM**

None

**BOARD  
QUESTIONS  
8:50 PM**

Nogal asked De Jana why the developer did not want the subdivision to be accessed from Prairie View Road. De Jana replied it was because of the additional expense. Nogal stated she was trying to understand why they were trying to put WHV through this when they had their own access. De Jana replied the purchase price for this property included the fact it had access from the north. Nogal asked why this was not the presentation when the subdivision wanted approval from the Board. Her understanding was the original idea was to access the development from Prairie View Road. De Jana stated it was the developer's understanding when he purchased the property that there was access from the north.

Larsen asked for clarification that the zone change was done by the previous owner, not the developer. De Jana confirmed and stated when looking at the zoning, it was not seen representationally. The evaluation looked at the zoning regulations. The developer represented to the County, and to the public, that this was going to be an access and the regulations said it was an access for subsequent subdivisions.

Nogal asked De Jana what he had to say to those who purchased lots in WHV. De Jana replied they should talk to the developer.

Larsen asked Murray if he was familiar with the road abandonment form, but Murray was not.

Larsen asked staff to confirm the staff report in front of them was different than the staff report the Board previously approved. Staff confirmed the staff report contained the updates.



**MAIN MOTION  
TO ADOPT F.O.F.  
(FPP-20-09)  
8:58 PM**

Stevens motioned, seconded by Breckenridge, to adopt staff report FPP-20-09 as Findings of Fact.

**BOARD  
DISCUSSION  
8:59 PM**

Stevens brought up that this file was not a mess the first time but it was a mess now. Staff changed the staff report after the Board had considered it. He stated he had never seen findings of fact changed between the Board and the Commissioners review. He discussed several previous applications which had resulted in legal settlements. He understood what an easement was and what the public was. The Board had previously tried to remove Condition #21, which required buy-in from the existing subdivision, because they did not agree with it. The reason these were not County roads were because the County road foreman did not want to plow subdivision roads, so the County Commissioners required them to be public access easements. It was his understanding the reasoning for dedicating them as public access easements was to facilitate sensible planning so useable land would not be landlocked. WHV asked the County to give them a County road to facilitate their subdivision. The County required them to provide a substitute access to do so.

Larsen stated he wanted to clarify how many written comments the Board had received, in response to one of the comments during the public hearing as he was only referring to the ones received immediately prior to the meeting. He put time into studying the record and understands how everyone feels. He spoke about a previous subdivision which he had worked on in Lakeside and was nearly an identical situation. The County approved their request to abandon a portion of Grayling Road and realign it, and the new subdivision road was dedicated as a public access easement. The same argument arose that the road was private and could not be used. It was determined future subdivision phases could use the road because it was a public access easement. His conclusion was Whitefish Village Drive was a public access easement for multiple reasons. The staff report from preliminary plat approval of WHV included testimony from the County Attorney's Office stating all internal subdivision roads must be shown as public access easements, as required by the subdivision regulations and also included testimony from the DNRC, requesting Brady Way be realigned to continue providing public access to the public lands to the south to ensure connectivity should future development of those lands occur. The road abandonment petition indicated the road realignment would allow continued public access to the public lands. The last sentence of Condition #24 for preliminary plat approval of WHV stated that all subdivision roads, including the realignment of Brady Way, shall be designated public access easements as required by the FCSR. The phasing plan for WHV states the right-of-way from Whitefish Village Drive to the southern property boundary shall be designated as a public right-of-way but not constructed. The justification provided on the road abandonment form indicates they were going to provide an identical public road to provide access

to public land, as required by state law. He looked at the legal ramifications of how this road existed. If there had not been a County road to begin with, there might be a different conclusion. The attorney report for the petition to abandon Brady Way stated the developer will construct a spur road at the south end of the section to connect Prairie View to Whitefish Village Drive to provide access to the subdivision from the south. The plat of WHV Phase 4 stated all subdivision roads were designated public access easements under the conditions of approval. The plat of WHV Phase 4 states, by order of the County Commissioners, these roads were designated public access easements under the certificate of private roadways. When you looked at the plat of WHV Phase 4, you saw the statement regarding the roads being public access easements. He referenced an opinion by MACO attorney Tara DePuy and believed she was correct but also that she did not have all the facts so her opinion was not valid. He referenced a statement from Caitlin Overland that public access easements were not defined. He stated this was correct in that there was no definition provided in the subdivision regulations, but it was easy to look up the definition elsewhere. He read a definition for public access easement which stated it was the right of the general public to use certain streets, etc. People could use it to access their properties and also to do subdivisions. He concluded this was a public access easement and all of these statements backed it up. He would vote for this with the requirements of amendments to the findings of fact and conditions.

Breckenridge stressed the point that the face of the plat contained one statement saying it was a private road and one statement saying it was a public access easement. Interpretation of such a document would require looking at the supporting information behind it. The facts supported the road being a public access easement. It is a private road, privately maintained, but that did not trump the fact it was a public access easement.

Stevens agreed with Breckenridge and stated it as a private road, and private land, but there was an easement on it.

Larsen asked the Board if anyone wanted to propose any amendments.

Breckenridge had prepared a few recommended amendments and distributed a document he had prepared with such.

**BOARD BREAK**  
**9:20 PM**

**BOARD**  
**DISCUSSION**  
**9:40 PM**

Breckenridge started going over the document he had passed out with the suggested amendments and discussed them individually.



**MOTION TO  
AMEND STAFF  
REPORT,  
SECTION 1(A)  
9:41 PM**

Breckenridge motioned, seconded by Stevens, to amend Staff Report, Section I(A) as follows:  
*Reinstate the stricken text and strike the update dated October 8, 2020.*

**BOARD  
DISCUSSION  
9:41 PM**

Breckenridge reasoned that they had a legal right to use Whitefish Village Drive.

**ROLL CALL TO  
AMEND STAFF  
REPORT,  
SECTION 1(A)  
9:45 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
9:45 PM**

Breckenridge felt the update made to the staff report stated they did not have legal access and wanted to change the language back to the originally approved language, by the Planning Board, so it would give them the option to use WHV Drive. It aligned with the findings of facts.

**MOTION TO  
AMEND STAFF  
REPORT,  
SECTION  
IV(A)(2)(c)  
9:48 PM**

Breckenridge motioned, seconded by Nogal, to amend Staff Report, Section IV(A)(2)(c) on Page 8 of the staff report as follows:  
*Reinstate the stricken text, strike the updated dated October 8, 2020, and add the following sentence in front of the last sentence of the second paragraph: However, the County Attorney's office has not provided an extensive report that factually demonstrates their position.*

**BOARD  
DISCUSSION  
9:50 PM**

None

**ROLL CALL TO  
AMEND STAFF  
REPORT, Section  
IV(A)(2)(c)  
9:50 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
9:50 PM**

Breckenridge addressed amending Finding of Fact #3 and reinstating the original language.

**MOTION TO  
AMEND F.O.F. #3  
9:53 PM**

Breckenridge motioned, seconded by Stevens, to amend Finding of Fact #3, as originally stated, to be:

~~The road system appears to be acceptable with the imposition of conditions because the internal subdivision road would be paved and constructed to Flathead County Road and Bridge Department standards, the applicant would be required to improve, including paving, approximately 69.6% of Prairie View Road between KM Ranch Road and the southern termination point of Baker Heights Drive, and approach permits from the Flathead County Road and Bridge Department will be required for the approaches onto Prairie View Road.~~ *The road system appears to be acceptable with the imposition of conditions because the internal subdivision road would be paved and constructed to Flathead County Road and Bridge Department standards, the applicant would be required to pave approximately 69.6% of Prairie View Road between KM Ranch Road and the southern termination point of Baker Heights Drive unless proof of legal access and a road maintenance mechanism for Whitefish Village Drive is provided, the proposed subdivision has the potential to increase traffic on Whitefish Village Drive by 160 ADT, and approach permits from the Flathead County Road and Bridge Department will be required for the approaches onto Prairie View Road.*

**BOARD  
DISCUSSION  
9:53 PM**

Discussion ensued regarding an amendment to Finding of Fact #3 that was submitted by De Jana.

Nogal supported reinstating the original finding as she was uncomfortable with the vagueness of the finding proposed by De Jana.

Larsen pointed out the original finding required proof of legal access. Breckenridge suggested adding an additional finding to address the proof of legal access.

**ROLL CALL TO  
AMEND F.O.F. #3  
9:57 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO  
AMEND SECTION  
IV(3)  
9:58 PM**

Breckenridge motioned, seconded by Larsen, to amend Section IV(E) on Page 15 of the staff report as follows:

Reinstate the stricken text, strike the updated dated October 8, 2020, and amend the second paragraph to read: *Whitefish Village Drive is dedicated as a public access easement, as required per Section 4.7.15(e) FCSR. As previously stated, comment received from the County Attorney's Office indicates it is their opinion that the applicant is required to obtain an easement or written permission from Whitefish Hills Village to access the Whitefish Village Drive because preliminary plat approval for Whitefish Hills Village did not include a specific condition requiring the subdivision to provide a right-of-way or easement to adjoining properties. However, evidence provided by the applicant's legal counsel appears to factually demonstrate that the Whitefish Village Drive was intended to replace/realign an unbuilt portion of an existing public right-of-way (Brady Way) that formerly bisected the lands now platted as Whitefish Hills Village, Phase 4. Lot owners within the proposed subdivision will be required to pay a pro-rata share of road maintenance to utilize Whitefish Village Drive.*

**BOARD  
DISCUSSION  
10:00 PM**

None

**ROLL CALL TO  
AMEND SECTION  
IV(3)  
10:00 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO  
AMEND F.O.F. #16  
10:01 PM**

Breckenridge motioned, seconded by Larsen, to amend Finding of Fact #16 to state:

~~The preliminary plat includes adequate provisions for legal and physical access to the subdivision and all lots within it with the imposition of conditions because Prairie View Road is a County maintained road, the developer is required to improve 69.6% of Prairie View Road between the southern boundary of the subdivision and KM Ranch Road, and the proposed internal subdivision road will provide access to each lot within the subdivision. The preliminary plat includes adequate provisions for legal and physical access to the subdivision and all lots within it, with the imposition of conditions, because Whitefish Village Drive and Prairie View Road would provide access to the subdivision and the internal subdivision road would provide access to each lot. [Conditions 5, 6, 20, 21]~~

**BOARD  
DISCUSSION  
10:02 PM**

None

**ROLL CALL TO  
AMEND F.O.F. #16  
10:02 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO  
AMEND F.O.F. #18  
10:02 PM**

Breckenridge motioned, seconded by Larsen, to amend Finding of Fact #16 to state:

*Evidence provided by the applicant's legal counsel appears to factually demonstrate that the Whitefish Village Drive was intended to replace/realign a portion of an existing public right-of-way known as Brady Way.*

**BOARD  
DISCUSSION  
10:03 PM**

None

**ROLL CALL TO  
AMEND F.O.F. #18  
10:03 PM**

Motion passed unanimously on a roll call vote

**BOARD  
DISCUSSION  
10:04 PM**

None

**ROLL CALL TO  
ADOPT F.O.F. AS  
AMENDED  
(FPP-20-09)  
10:04 PM**

Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FPP-20-09)  
10:05 PM**

Stevens made a motion, seconded by Jackson, to recommend approval of FPP-20-09 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
10:05 PM**

None

**MOTION TO  
AMEND  
CONDITION #6  
10:05 PM**

Breckenridge motioned, seconded by Nogal, to amend condition #6 as stated:

With the application for final plat, the developer shall provide a compliant Road User's Agreement or CC&Rs document which requires each property owner to bear his or her pro-rata share for maintenance of the roads within the subdivision and for any integral access roads lying outside the subdivision: *including for its public access under condition 21 of this approval. The covenants will include the following language: 'Recognizing that Whitefish Hills Village contains 88 lots and Baker 80 contains 16 lots, each lot in Baker 80 as part of their annual assessment payable to the homeowners association shall pay 1/104<sup>th</sup> of the cost of maintaining Whitefish Village Drive as determined by the financial disclosure of the previous years cost for maintenance as provided by Whitefish Village Homeowners' Association's treasurer in a verified statement delivered on or before January 1 of each year.'*

**BOARD  
DISCUSSION  
10:07 PM**

Board discussion ensued regarding the County's involvement with CC&Rs. Stevens stated the County Commissioners refused to be involved with CC&Rs for subdivisions. They will not review or enforce them due to a previous lawsuit. The Board asked staff for input. Mussman stated the language requiring a Road User's Agreement or CC&Rs was directly from the subdivision regulations.

**ROLL CALL TO  
AMEND  
CONDITION #6  
10:10 PM**

Motion passed unanimously on a roll call vote.



**MOTION TO  
AMEND  
CONDITION #21  
10:10 PM**

Breckinridge motioned, seconded by Jackson, to amend condition #21 as stated:

Prior to final plat approval, the developer shall improve provide a compliant Road User's Agreement or CC&Rs document containing the language required by condition 6, unless the applicant improves 69.6% of Prairie View Road between KM Ranch Road and the southern termination point of Baker Heights Drive. The improvements shall be certified by a licensed engineer and constructed and paved in accordance with the Flathead County Minimum Standards for Design and Construction. The developer shall also provide a compliant Road User's Agreement or CC&Rs document which requires each property owner to bear his or her pro rata share of maintenance of Baker Heights Drive.

**BOARD  
DISCUSSION  
10:12 PM**

Stevens opened discussion regarding whether the applicant agreed with the proposed amendment. The applicant's technical representative replied they approve of the proposed amendment. Adams asked if the amendment was saying the applicant would not have to provide a Road User's Agreement or CC&Rs document for Whitefish Village Drive if they improve a portion of the Prairie View Road, but would still have access via Whitefish Village Drive. Breckenridge asked for clarity. Adams stated the revision was likely fine given the amendment to Condition #6.

**ROLL CALL TO  
AMEND  
CONDITION #21  
10:15 PM**

Motion passed unanimously on a roll call vote.

**BOARD  
DISCUSSION  
10:15 PM**

None

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FPP-20-09)  
10:15 PM**

Motion passed on a 5-1 roll call vote. Nogal dissented.

<b>MCLUAC / ADD SEASONAL EMPLOYEE HOUSING (FZTA-19-03) 10:17 PM</b>	A request by the Middle Canyon Land Use Advisory Committee for a zoning text amendment to the Canyon Land Use Regulatory System (CALURS). The proposed amendment would add Work Camp to the list of land uses in Section 6.2(B) that require Minor Land Use approval. The request further proposes to add performance standards for Work Camp in Chapter 4 and add a definition of Work Camp.
<b>STAFF REPORT 10:17 PM</b>	Mark Mussman reviewed staff report FZTA-19-03 for the board.
<b>BOARD QUESTIONS 10:21 PM</b>	<p>Mussman reported that MCLUAC had passed a positive recommendation of approval for FZTA-19-03.</p> <p>Larsen questioned condition #13 and wanted to make sure that the Fire Department was ok with it.</p> <p>Nogal asked a question (<i>inaudible</i>). Mussman said that many of the business did provide on-site employee housing.</p>
<b>APPLICANT PRESENTATION 10:23 PM</b>	None
<b>AGENCY COMMENTS 10:23 PM</b>	No agencies were present to comment.
<b>PUBLIC COMMENTS 10:23 PM</b>	None. Written comments were reviewed and summarized for the board. Comments received were in support of the proposal.
<b>MAIN MOTION TO ADOPT F.O.F. (FZTA-19-03) 10:23 PM</b>	Nogal made a motion, seconded by Breckenridge, to adopt staff report FZTA-19-03 as findings of fact.
<b>BOARD DISCUSSION 10:24 PM</b>	None
<b>ROLL CALL TO ADOPT F.O.F. (FZTA-19-03) 10:24 PM</b>	Motion passed unanimously on a roll call vote.

**MAIN MOTION  
TO RECOMMEND  
APPROVAL  
(FZTA-19-03)  
10:24 PM**

Nogal made a motion, seconded by Stevens, to recommend approval of FZTA-19-03 to the Board of County Commissioners.

**BOARD  
DISCUSSION  
10:24 PM**

None

**ROLL CALL TO  
RECOMMEND  
APPROVAL  
(FZTA-19-03)  
10:24 PM**

Motion passed unanimously on a roll call vote.

**OLD BUSINESS  
10:25 PM**

Mussman discussed having an Agricultural Ad-Hoc Committee, as requested by a group of citizens to assist when looking at the Agricultural Zones. Stevens had discussed the idea with the Commissioners and they were opposed the Planning Board giving official designation for such board. They were open to public comment but did not think that the Planning Board had the authority to do that.

Larsen agreed the Planning Board should not be nominating other Boards. Adams said people were welcome to give public comment at any time. He was not comfortable with giving such responsibility to a board.

**NEW BUSINESS  
10:29 PM**

None

**ADJOURNMENT  
10:29 PM**

The meeting was adjourned on a motion by Stevens and Nogal at approximately 10:29 p.m. The next meeting will be held February 10, 2021.

  
\_\_\_\_\_  
Jeff Larsen, Chairman

  
\_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 2 / 10 / 21